



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Kennedy Electric Company, Inc.

**File:** B-239687

**Date:** May 24, 1990

Michael Tuchler, for the protester.  
Jennifer Westfall-McGrail, Esq., and Christine S. Melody,  
Esq., Office of the General Counsel, GAO, participated in  
the preparation of the decision.

### DIGEST

Bid properly may be rejected as nonresponsive where bidder fails to indicate penal sum of bid bond either as a percentage of the bid amount or as a fixed sum.

### DECISION

Kennedy Electric Company, Inc., protests an award to any other bidder under invitation for bids (IFB) No. 90-Z14, issued by the Central Intelligence Agency. Kennedy argues that its low bid should be accepted despite the fact that the bid bond accompanying its bid failed to indicate a penal sum either as a percentage of the bid price or as a fixed sum.

We dismiss the protest without obtaining a report from the agency because it is clear from the face of the protest that it does not state a valid basis for protest. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1989).

Kennedy explains that its bonding agent inadvertently left blank the box on its bid bond where the penal sum of the bond should have been inserted. Kennedy contends that the agency should nonetheless award it a contract because its price was low.

The purpose of a bid bond is to assure that a bidder will not withdraw its bid within the time specified for acceptance; it secures the liability of a surety to the government in the event the bidder fails to fulfill its obligations. Allen County Builders Supply, 64 Comp. Gen. 505 (1985), 85-1 CPD ¶ 507. Thus, the sufficiency of a bid

044594 / 141444

bond will depend on whether the surety is clearly bound by its terms. When the liability of the surety is not clear, the bond properly may be regarded as defective and the bid rejected as nonresponsive. F&F Pizano, B-219591; B-219594, July 25, 1985, 85-2 CPD ¶ 88.

The fact that Kennedy may have intended to submit a bid bond for the required 20 percent of the bid amount and for the surety to be bound thereby is irrelevant, since it is not the bidder's intent that controls. The relevant inquiry, rather, is whether the surety's obligation has been objectively manifested on the bidding documents so that the extent and character of its liability is clearly ascertainable therefrom. Allen Country Builders Supply, 64 Comp. Gen. 505 (1985), supra. Here, in our view, the requisite obligation could not be clearly created without inserting a specific penal sum or percentage in the place provided on the bond. Id.; M/V Constructor Co., B-232572, Sept. 20, 1988, 88-2 CPD ¶ 272.

Since the protester concedes that the bid bond accompanying its bid failed to indicate the penal sum of the bond, we dismiss its protest.



Robert M. Strong  
Associate General Counsel